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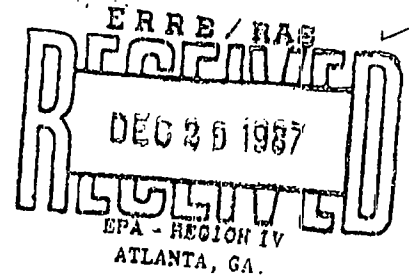
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December 28, 1987

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BY HAND DELIVERY

Mr. R. Wayne Lee
Assistant Regional Counsel
United States Environmental Protection
Agency, Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365



Re: Medley Farm Site

Dear Mr. Lee:

This letter is submitted on behalf of our client, National Starch and Chemical Corporation, and the Medley Farm Site Steering Committee. On December 28, 1987, we picked up a letter from EPA at 2:30 in the afternoon. This letter requires all of the members of the Medley Farm Site Steering Committee to agree to the terms of a revised EPA administrative order and to advise EPA by 5:00 on the 28th that we have accepted the terms of the revised administrative order. Upon receipt and review of the order, I called my client to discuss this matter. Due to illness in the family, my client is not available today. Therefore, it is not possible to advise you that my client has accepted or rejected the order.

The Medley Farm Site Steering Committee objects to the unreasonable deadlines imposed by EPA and EPA's unwillingness to negotiate in good faith. A brief summary of the history of negotiations illustrates our concerns. On September 2, 1987, the Medley Farm Site Steering Committee committed to conduct an RI/FS for the Medley Farm Site as soon as the site was placed on the National Priorities List. EPA did not respond to this offer for six weeks. When EPA responded, it advised the steering committee that the offer was unacceptable and that the time for negotiation was running during the six weeks it took EPA to make a decision. However, EPA did advise the steering committee that it was willing to agree to reimburse the steering committee for its cost in performing the RI/FS in the event the site did not make the National Priorities List.

On November 2, 1987, we agreed to EPA's proposal that we conduct the RI/FS even before the site was placed on the NPL. On

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November 2, we provided the agency with a list of contractors we were considering. On November 19, 1987, the steering committee provided written comments to EPA regarding EPA's original draft of an order for the RI/FS. EPA did not respond to those comments for three weeks. When the agency responded on December 10, it revised several provisions which the parties had agreed upon. The revised provisions rendered the December 10 draft completely unacceptable. In particular, the December 10 revision made the following significant changes:

(1) **Paragraph XII - Dispute Resolution.** The original dispute resolution provision proposed by EPA is based upon model language. This is not a dispute resolution provision but rather a unilateral opportunity for EPA to reconsider an objection from respondents. The original language proposed by EPA is not fair, but respondents were willing to accept it. However, in the December 10 draft EPA changed its dispute resolution provision so as to provide that stipulated penalties will begin to accrue on the first day that the respondents seek EPA resolution of a dispute. EPA's unilateral changes in this language have made the dispute resolution clause a punitive and constitutionally unfair provision. We objected to the provision in a lengthy conference call on December 23. However, it remains in the December 28 draft.

(2) **Paragraph XIII - Stipulated Penalties.** In EPA's original draft, EPA proposed stipulated penalties for failure to meet the "major tasks" designated in the RI/FS work plan. While respondents expressed concern about the amount of the stipulated penalties proposed, respondents agreed to the concept of imposing stipulated penalties for failure to meet the "major tasks." In the December 10 revision, EPA unilaterally added a phrase which would require the imposition of stipulated penalties for failure to comply with any provision of the consent order no matter how trivial. EPA Region IV has a long history of agreeing to consent orders with stipulated penalty provisions limited to major tasks. We objected to this unilateral addition on December 23, however, it remains in the December 28 draft.

(3) **Preauthorization.** EPA originally agreed to reimburse the respondents for response costs if the site did not make the NPL. EPA has now withdrawn this offer after respondents accepted it.

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The three items set forth above are important and suggest to the steering committee that EPA is not negotiating in good faith. In addition, EPA has substantially interfered with the steering committee's desire to move expeditiously to select a contractor to perform the RI/FS. First, EPA has delayed in providing documents. Second, EPA has refused access to documents to one of the contractors named in our November 2 letter. Documents relating to the site are matters of public record. There is no basis for EPA to refuse access to documents regarding conditions at the site, particularly in light of the unrealistic deadlines imposed by the agency.

EPA's December 10, 1987, draft was not received by many of the steering committee members until December 14. Moreover, counsel for several of the steering committee members have clients that reside outside of Region IV. EPA imposed a December 28 deadline for submission of an agreed-upon order. This approach is unrealistic and again suggests that the agency is not interested in good faith negotiations.

Representatives of the steering committee were available to discuss this matter further with you by telephone on the afternoon of the 23rd and on the morning of the 24th. We are available to meet today, tomorrow, or any day that the agency is willing to discuss this issue with us. We will also be preparing an order based on similar orders entered in Region IV matters. This order will be submitted to you shortly. If EPA is unwilling to enter an administrative consent order similar to other orders which the agency has entered into at other sites, the steering committee believes that the agency will not be able to sustain its arbitrary and unreasonable actions when reviewed by a court.

Sincerely,

Chet Tisdale C.O.

Charles H. Tisdale, Jr.

CHT/lp
Enclosure

cc: Ms. V. Ann Heard
Mr. Lee A. DeHihns, III
Mr. Jay Sargent
The Medley Farm Site Steering Committee